

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

THOMAS CARTER, III,)	
WILLIAM A. CARTER,)	Civil Action
CHARLES H. CURRY,)	No. 08-cv-05421
ROBERT L. DESROSIERS,)	
STEVEN D. FORMAN,)	
GREGORY P. HEIL,)	
RICHARD E. HEISERMAN,)	
ELLERY F. JOYNES,)	
EDWARD J. KAZLO,)	
STEPHEN I. LYLES, JR.,)	
GENERO T. MITCHELL, JR.,)	
ROBIN M. MITCHELL,)	
ARTHUR POOLE, JR.,)	
EDWARD W. PORTER,)	
THOMAS V. WATERS and)	
IRA T. WATTS,)	
)	
Plaintiffs)	
)	
vs.)	
)	
COMMONWEALTH OF PENNSYLVANIA,)	
PENNSYLVANIA STATE POLICE,)	
)	
Defendant)	

O R D E R

NOW, this 28th day of September, 2009, upon consideration of Defendant's Motion to Dismiss, filed by defendant Commonwealth of Pennsylvania, Pennsylvania State Police on December 18, 2008; upon consideration of Plaintiffs' Response in Opposition to Defendant's Motion to Dismiss, which response was filed on January 30, 2009; upon consideration of the briefs of the parties¹; after oral argument held before the undersigned

¹ On December 18, 2008 defendant filed a Memorandum of Law of Defendant Pennsylvania State Police in Support of Its Motion to Dismiss. On January 30, 2009 plaintiffs filed a brief titled Plaintiffs' Response in Opposition to Defendant's Memorandum of Law in Support of Motion to Dismiss.

on July 7, 2009; and for the reasons articulated in the accompanying Opinion,

IT IS ORDERED that defendant's motion to dismiss is granted in part and denied in part.

IT IS FURTHER ORDERED that Defendant's Motion to Dismiss Counts II² and III³ of plaintiffs' complaint is granted by agreement of counsel.⁴

IT IS FURTHER ORDERED that Counts II and III are dismissed from plaintiffs' Complaint - Civil Action filed November 17, 2008.

IT IS FURTHER ORDERED that Defendant's Motion to Dismiss Count I⁵ of plaintiffs' complaint is denied.

IT IS FURTHER ORDERED that defendant shall have until October 23, 2009 to file an answer to Count I of plaintiffs' Complaint - Civil Action.

BY THE COURT:

/s/ James Knoll Gardner
James Knoll Gardner
United States District Judge

² Count II of plaintiffs' complaint alleges race discrimination claims under 42 U.S.C. §§ 1981 and 1981a.

³ Count III of plaintiffs' complaint alleges age discrimination claims under the Age Discrimination Employment Act, 29 U.S.C. §§ 621 to 634.

⁴ In Plaintiffs' Response in Opposition to Defendant's Motion to Dismiss and accompanying response brief, plaintiffs concede that Counts II and III should be dismissed from plaintiffs' complaint because of the immunity clause of the Eleventh Amendment to the United States Constitution.

⁵ Count I of plaintiffs' complaint alleges claims of race discrimination under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e to 2000e-17.